

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
DOCKET NO. 3:14-cv-00596-MOC-DSC

<b>MICHAEL RICH,</b>	)	
	)	
	)	
Plaintiff,	)	
	)	
Vs.	)	ORDER
	)	
	)	
<b>THE ESTATE OF ROBERT BROWN,</b>	)	
	)	
Defendant.	)	

**THIS MATTER** is before the court on plaintiff's Motion for Summary Judgment. In Response, defendant seeks relief under Rule 56(d), Federal Rules of Civil procedure, stating that discovery is needed before it can prepare an adequate response. In Reply, plaintiff questions the adequacy of the affidavit of defendant's counsel and questions why defendant failed to seek discovery earlier.

While any party may move for summary judgment "at any time until 30 days after the close of all discovery," Fed.R.Civ.P. 56(b), where such motion is filed nearly three months before the close of discovery the moving party is likely to encounter a Rule 56(d) motion. Despite the deficiencies noted by plaintiff, the court concurs with defendant that additional discovery is needed before it can adequately address whether any genuine issue of material fact remains for trial. The court will, therefore, deny the Motion for Summary Judgment without prejudice as to refiling after the close of discovery.

Finally, the court would encourage all counsel and their clients to return to mediation or attempt to resolve this matter short of trial. Issues of whether an insured was or was not competent

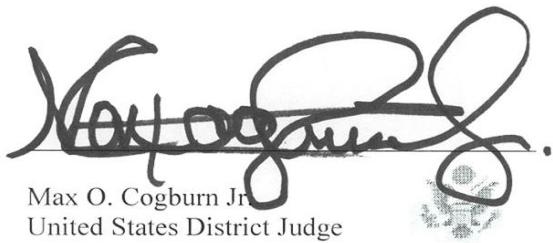
at the time he changed a designation of beneficiaries is a determination that, if resolved by a court or a jury, will necessarily involve a protracted factual inquiry and, perhaps, expert testimony. While the sum interpledged is substantial, even that amount can quickly be consumed by attorneys' fees, costs, and paying expert witnesses.

The parties, who appear to be first cousins, should weigh the costs not only of this litigation, but the costs of having those funds sit in the court's registry pending final resolution of this matter, which could be years if appeals are taken.

## ORDER

**IT IS, THEREFORE, ORDERED** that plaintiff's Motion for Summary Judgment (#27) is **DENIED** without prejudice as to refiling after the close of discovery.

Signed: June 24, 2015

A handwritten signature in black ink, appearing to read "Max O. Cogburn Jr.", is written over a horizontal line. To the right of the signature is a small, faint, circular official seal or stamp.

Max O. Cogburn Jr.  
United States District Judge